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The Influence of Islamic Law on Intelligence and Law Enforcement

By William Gawthrop

This article examines the influence of the Sharia on U.S. intelligence and law enforcement across strategic, operational and tactical levels of doctrine.

The Strategic Environment:

The Perpetual War: dar-al Islam vs dar al-harb: The Islamic World view divides the world into the House of War and the House of Islam (dar al-harb and dar al-Islam)¹ and state of war, not peace, perpetually exists between Islam and unbelievers^{2,3,4,5,6,7,8,9,10,11,12}. "Peace with non-Muslims is therefore a provisional state of affairs only; the chance of circumstances alone can justify it temporarily. Furthermore there can be no question of genuine peace treaties with these nations;

only truces, whose duration ought not, in principle, to exceed ten years are authorized. But even such truces are precarious, in as much as they can, before they expire, be repudiated unilaterally should it appear more profitable for Islam to resume the conflict."¹³

Against this background, understand that you are, and will always be, at war.

One characteristic of that war is, and will be, a clash of doctrines that will be most visible in the interview and interrogation rooms.

The Operational Environment

Intelligence and Law Enforcement doctrine are characterized by interviews and interrogations of subjects, victims and witnesses and the object of the investigation is "the truth of the matter." Americans come from a "Truth Culture"; "I cannot tell a lie – I cut down the Cherry Tree."

Such may (may) not be the case in Islamic Law¹⁴ and this is a source of conflict.

Evolution of Islamic law

Islamic law evolved through the Meccan and Medina periods reflecting the stages of Muhammad's political thought. During the Meccan period believers were threatened, assaulted and occasionally murdered by their unbelieving families and neighbors and Mohammad prescribed moral and ethical mandates, discouraged confrontation and advocated polite disassociation to reduce adversarial encounters between the Muslim and Non-Muslim communities. These included the development of defensive social doctrines known as dissimulation including *kitman* ("Concealing; keeping a secret")¹⁵, and *takiyya* ("...denotes dispensing with the ordinances of religion in cases of constraint and when there is a possibility of harm").^{16,17} Another doctrine is disassociation; reducing contact with non-believers to the essential minimum.¹⁸ As early coping mechanisms, these defensive doctrines gained scholarly acceptance and during the Medina periods became precedence codified in Islamic law. Muhammad gave practical guidance for the resolution of conflicts by encouraging Muslims to carefully gauge contact with non-Muslims to protect against hostile and subversive forces. Pertinent revelations include Suras 3:28, 4:139, 4:144, 5:57, 9:23, 9:29, 60:1, 60:2., 60:3, and 60:13.¹⁹

The central themes with U.S. intelligence and law enforcement implications are:

- do not take disbelievers as protectors, helpers or friends (Sura 3:28) (4:144) (5:57) (60:1) (60:3) (60:13)
- those who do take disbelievers as protectors, helpers or friends are untrustworthy (4:139)
- avoid family members who take disbelievers as protectors, helpers or friends (9:23)
- fight disbelievers (9:29)
- If disbelievers gain the upper hand over you they will behave as enemies and stretch forth their hands and tongues against you with evil to induce disbelief. (60:2)

Interpersonal Relations

Mohammad sought to foster forbearance and tolerance among the faithful and mandated the reduction or elimination of undue social inquisitiveness about private matters. He gave clear guidance on issues of propriety, appropriate and inappropriate social inquiry, preservation of confidences and secrets, prohibitions on slander, and the exigencies of dissimulation which can be found in the Koran, traditional accounts

of Mohammad's life (the *Sira*²⁰), the example of Mohammad (the *Sunna*²¹) and the traditions associated with his sayings (the *Haddiths*).²² These sources are foundational to Islamic Law.

Islamic Law

Islamic law may found in *fiqh* manuals²³ similar to how Title 10 of the US Code may be found in a hard bound copy of the Uniform Code of Military Justice. *Fiqh* and other doctrinal manuals provide insight to the obligatory (*wajib*), recommended (*mandub*), permissible (*mubah*), prohibited (*haram*) or the repugnant (*makrub*) categories of behavior²⁴ and the more readily available manuals included *Riyad-us-Saliheen*,²⁵ *The Distinguished Jurists Primer*,²⁶ *The Book of Revenue*,²⁷ *Al-Masqasid: Nawawi's Manual of Islam*²⁸ and *Umdat al salik (Reliance of the Traveller)*²⁹. Agents, analysts and supervisors should have these texts.

The Tactical Environment: Visible Conflict

Investigative phases include the questioning of witnesses and subjects, interpretation of the interviews and evidence, drawing conclusions concerning culpability, and the referral of the investigation for subsequent state action. Specifically, the investigator asks about the actions of another, solicits incriminating evidence, tries to expose secrets, and carefully reviews testimony for accuracy. In some cases, the services of a translator may be required.

If any member of the investigative team, subject, witnesses or victims are also subject to the Sharia, conflicts may (may) rise with regard to the integrity and investigative rigor required of an Intelligence or Law Enforcement investigation.

Sources of Conflict

Some areas of possible, but not necessarily inevitable, conflict may be found in *Reliance of the Traveller* which is comprised of 22 chapters addressing wide ranging topics governing daily life. The most relevant chapter from an intelligence and law enforcement perspective is "Holding One's Tongue" which is comprised of 40 sections. Eleven (11) sections are relevant to law enforcement and intelligence analysts. They are Slander, Two People Conversing So That A Third Cannot Hear, Informing on Another, Lying, Giving a Positive Interpretation to Another's Seeming Mistakes, Giving a Misleading Impression, Picking Apart a Brother's Words, Asking About Another's Mistakes, Searching Out a Person's Faults, Rejecting a Brother's Excuse, and Revealing a Secret.

The following provisions should be assessed from the perspective of one member of the investigating

team, or a subject, victim or witness having an obligation to the Sharia.

Slander. Slander, in the Western context, is the utterance of false charges or misrepresentations which defame and damage another's reputation. Within the Sunni Islam tradition, slander means mentioning anything concerning a person that that person would dislike. The investigator, seeking the truth of the matter from a member of the umma about another member may (may) be inducing the moral and legal appearance of soliciting slander.

"Slander means to mention anything concerning a person that he would dislike, whether about his body, religion, everyday life, self, disposition, property, son, father, wife, servant, turban, garment, gait, movements, smiling, dissolution, frowning, cheerfulness, or anything else connected with him."³⁰

"Do you know what slander is?" They answered, "Allah and His Messenger know best." He said, "It is to mention of your brother that which he would dislike." Someone asked, "What if he is as I say?" And he replied, "If he is as you say, you have slandered him, and if not, you have calumniated him."³¹

"The Muslim is the brother of the Muslim. He does not betray him, lie to him, or hang back from coming to his aid. All of the Muslim is inviolable to his fellow Muslim: his reputation, his property, his blood. Godfearingness is here (the heart). It is sufficiently wicked for someone to belittle his fellow Muslim."³²

Two People Conversing So That A Third Cannot Hear. Muhammad said, "When there are only three of you, two of you may not speak together apart from the third unless you join a group of others, lest your doing so sadden him."³³

This has been interpreted by Nahlawi³⁴ as prohibiting "two individuals conversing privately when a third is present and likewise prohibits three or more people from doing so when there is a single person apart from them."

"The prohibition indicates its unlawfulness, it being impermissible for a group to converse apart from a single individual unless he gives his permission."³⁵

The Maikite school holds that "the prohibition is applicable at all times, whether one is at home or traveling" while Hanafi scholars hold "that such converse is forbidden only while traveling, not when home, for when traveling it may portend danger."³⁶

Informing on Another. Muhammad said, "Let none of my Companions inform me of anything another of

them has said, for I wish to come to you without disquiet in my heart."³⁷

Lying. "Primary texts from the Koran and sunna that it is unlawful to lie are both numerous and intersubstantiative, it being among the ugliest sins and most disgusting faults. Because of the scholarly consensus of the Community (Umma) that it is prohibited and the unanimity and amount of the primary textual evidence, there is little need to cite particular examples thereof, *our only concern here being to explain the exceptions to what is considered lying*, and appraise of the details."³⁸

Mohammad "said, 'He who settles disagreements between people to bring about good or says something commendable is a not a liar.'³⁹

"This much is related by both Bukhara and Muslim, with Muslim's version recorded that Umm Kulthum added, "I did not hear him permit untruth in anything people say, except for three things: war, settling disagreements, and a man talking with his wife or she with him (A: in smoothing over differences)."⁴⁰

Abu Hamid Ghazali (1058-1111) who is credited with being an "outstanding theologian, jurist, original thinker, mystic and religious reformer,"⁴¹ is quoted as saying, "If a praiseworthy aim is attainable by lying but not telling the truth, *it is permissible to lie if attaining the goal is permissible. It is obligatory to lie if the goal is obligatory.* When, for example, one is concealing a Muslim from an oppressor who asks where he is, it is obligatory to lie about him being hidden. Or when a person deposits an article with one for safekeeping and an oppressor wanting to appropriate it inquires about it, it is obligatory to lie about having concealed it, for if one informs him about the article and he then seizes it, one is financially liable (to the owner) to cover the article's cost. Whether the purpose is war, settling a disagreement, or gaining sympathy of a victim legally entitled to retaliate against one so that he will forbear to do so; it is not unlawful to lie when any of these aims can be obtained through lying. But, it is religiously more precautionary in all cases to employ words that give a misleading impression, meaning to intend by one's words something that is literally true, in respect to which one is not lying, while the outward purport of the words deceives the hearer, though even if one does not have such an intention and merely lies without intending anything else, it is not unlawful in the above circumstances."⁴²

"*Lying is permissible when there is a legitimate desired end.*"⁴³

*"The legitimate desired end may be a personal one."*⁴⁴

*"When an oppressor intending to appropriate one's property inquires about it, one may deny it. Or, if a ruler asks one about a wicked act one has committed that is solely between one's self and Allah (e.g. does not concern the rights of another) one can disclaim it....There are many well known hadiths in which those who admitted they deserved punishment were given prompting (by Mohammed) to retract their confessions....An example of a legitimating desired end of another is when one is asked about another's secret and one disacknowledges it... One should compare the bad consequences entailed by lying to those by telling the truth, and if the consequences of telling the truth are more damaging, one is entitled to lie though if the reverse is true or if one does not know which entails more damage, then lying is unlawful. Whenever lying is permissible, if the factor which permits it is a desired end of one's own, it is recommended not to lie, but when the fact that permits it is the desired end of another, it is not lawful to infringe on his rights. Strictness opposed to the above dispensations is to forgo lying in every case where it is not legally obligatory."*⁴⁵

Giving A Positive Interpretation To Other Seeming Mistakes. Nawawi opined that with regard to the responses of students to their teachers, "it is obligatory for a student to give a positive interpretation to every utterance of his brothers that seems to be wrong until he has exhausted seventy excuses. No one is incapable of this except a failure."⁴⁶

Giving a Misleading Impression. "Giving a misleading impression is among the most important topics, being frequently met with and often abused. It befits us to examine the matter closely, and whoever learns of it should reflect upon it and apply it."⁴⁷

*"Giving a misleading impression means to utter an expression that ostensibly means to utter an expression that ostensibly implies one meaning while intending a different meaning the expression may also have, one that contradicts the ostensive purport. It is a kind of deception."*⁴⁸

*"It often takes the form of the speaker intending a specific referent while the hearer understands a more general one, as when a person asks a householder, 'Is So and so here?' to which the householder, intending the space between himself and the questioner rather than the space inside the house, replies, 'He is not here.'"*⁴⁹

"Scholars say that there is no harm in giving a misleading impression if required by an interest countenanced by Sacred Law that is more important than *not* misleading the person being addressed, or if there is a pressing need which could not otherwise be fulfilled except through lying."⁵⁰

Picking Apart Another's Words. "Picking apart another's words consists of attacking another's speech by revealing the mistakes in it, whether its weak Arabic, meaning, or the intention of the speaker, as when one says, "this is true, but you do not intend the truth by it, when such an attack involves no other motive than contempt for the other and displaying ones cleverness, it is unlawful."⁵¹

"When one "hears something true, it befits him to accept it. *If it is not true, but is unconnected with religious matters, he should remain silent*, though if connected with religious matters, he is obliged to show that it is false and to condemn it if there is a chance that anyone will believe him, because this is forbidding the wrong."⁵²

Asking About Another's Mistakes. "It is forbidden to ask about another's errors and blunders in order to tell them they have made a mistake or to embarrass them, being unlawful because it entails injury to another and belittling him in front of people. But when one's asking about mistakes is to learn or teach, or to test or sharpen student's minds or make them reflect, then it is recommended and desirable, because it facilitates the comprehension of religious knowledge."⁵³

"Asking about and searching out the faults of others is spying, which Allah Most High has forbidden by saying: 'Do not spy' (Sura 49:12), meaning to look for the shameful points of Muslims. The Prophet ... said

(1) "If you search for people's shameful points, you corrupt them..."

(2) "O you who have entered Islam with your tongues but whose hearts faith has not entered: do not slander people, and do not ferret out people's shameful points. Whoever searches out the shameful points of his brother, Allah will search out his own shameful points, be sure that He will disgrace him even if he should remain in the middle of his house."⁵⁴

Searching Out a Person's Faults. "Asking about and searching out the faults of others is spying, which Allah Most High has forbidden by saying: "Do not spy"

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Rejecting a Brother's Excuse. "When someone offers an excuse to his fellow Muslim and the latter does not accept it, his sin is like the crime of imposing taxes."⁵⁶ By way of comparison, "He who imposes taxes resembles a highwayman, and is worse than a thief."⁵⁷

Revealing a Secret. "Mohammed said: "When a man says something. Then glances left or right, his words are a confidence to be kept." "Telling a secret means to inform others of a remark, action, or state which one learns of from someone who wants to remain hidden, whether it be good or bad. This is hurting him, and hurting others is unlawful. When two people meet, it is obligatory to keep secret any act that occurs, any word spoken, or any state attributable to someone, when these concern something one would normally wish to remain confidential, while not being unlawful. If it is against Allah Most High alone and does not involve legal measures such as prescribed legal penalties or disciplinary action, then it must be kept secret. *If it involves legal measure, as do fornication and drinking, then one has a choice between revealing it or not, though it is superior to conceal it.* If it involves another person's rights, then if concealing it entails harm to anyone, or if it concerns prescribed legal measures such as retaliation for an injury or death, or covering the cost of an article destroyed through negligence, then if the person whose rights have been infringed is ignorant of it, one is obliged to make the matter known, and must testify to it *if asked to*. If it involves another's rights, but concealing it does not entail harm to anyone and it does not concern prescribed legal measures, or it entails one of these two, but the person concerned already knows of it through another and one has not been asked to testify about it, then one is obliged to conceal the matter."⁵⁸

Implications and Indicators

Conflicting ideological beliefs impose an encumbrance on the believer. If the believer is also an investigator or analyst shouldering the responsibilities of an intelligence or law enforcement investigation, and he is confronted with a divided loyalty situation (fellow believer as a criminal or intelligence subject), it is logical that the believer may adhere to the calling of the higher authority.

Instances may begin to show unusual characteristics: delayed official recognition of the obvious; simple processes become problematic; evidence becomes lost or tainted; translations are inaccurate; subjects, victims or witnesses behave in an unusual manner compared to other, similar cases; simple staff coordination /case management becoming mysteriously complicated; decision cycle slowed or derailed; common sense solutions subjected to unusual mental gymnastics; aberrations in the “normal feel” of internal processes, procedures, discussions; failure to give doctrinally complete answers or analysis on fundamental or multiple points.

We should be asking: “Is there doctrinal contamination at work? If so, where?”

William Gawthrop is a former U.S. Army Criminal Investigator and a retired U.S. Army Counterintelligence Officer

Endnotes

1 Pruthi, R.K. ed. *Encyclopaedia of Jihad* (vol 1). Anmol Publications, PVT. LTD, New Delhi: (2002). P. 1-15, passim.

2 Malik, S.K. *The Quranic Concept of War*, Adam Publishers, Delhi, (1992) (Page 3 of the Preface: Pages un numbered) “Islam views the world as though it were bipolarized in two opposing camps –Darus-Salam facing Darul-Harb – the first one is submissive to the Lord in co-operating with the God’s purpose to establish peace, order and such other pre-conditions of human development, but the second one, on the other hand, is engaged in perpetuating defiance of the same Lord. Such a state of affairs which engages any one in rebellion against God’s will is termed as “Fitna” – which word literally means test or trial. The term “Fitna” refers us to misconduct on the part of a man who establishes his own norms and expects obedience from others thereby usurping God’s authority – who alone is sovereign. In Sura Infa’al Chapter 9, Verse 39, it is said, “And fight on until there remains no more tumult or oppression and the remain submissive

3 Khadduri, Majid, *War and Peace in the Law of Islam*, London, (1955) p. 63-64. “It follows that the existence of a dar al-harb is ultimately outlawed under the Islamic jural order; that the dar al-Islam permanently under jihad obligation until the dar al-harb is reduced to non-existence; and that any community accepting certain disabilities - must submit to Islamic rule and reside in the dar al-Islam or be bound as clients to the Muslim community. The universality

of Islam, in its all embracing creed, is imposed on the believers as a continuous process of warfare, psychological and political if not strictly military

4 Khadduri, Majid. *The Islamic Law of Nations: al-Shayban’s Siyar*. Johns Hopkins Press, Baltimore: (1966). p. 17: The state of war should, accordingly, come to an end when the dar-al-harb had disappeared. At such a stage the dar al-Islam, as the abode of peace, would reign supreme in the world. It may be argued, therefore, that the ultimate objective of Islam is the achievement of permanent peace rather than the perpetuation of war. Thus the jihad, in Islamic theory, was a temporary legal device designed to achieve Islam’s ideal public order by transforming the dar al-harb into the dar al-Islam

5 Bernard Lewis, *Cultures in Conflict* (New York: Oxford University Press, 1995), p. 14. “The world was divided into the House of Islam, where the Muslim faith and law prevailed, and the House of War, where they did not, and between the two there would be a perpetual state of war, interrupted only by truces, until the Word of God was brought to all humanity. For most Muslim writers, Christendom — first Byzantine and then European — was the House of War par excellence.”

6 *Global War On Terrorism: Analyzing the Strategic Threat - Discussion Paper Thirteen*, Joint Military Intelligence College, Washington, DC (2004), p. 39. “The dar al-Islam is in perpetual war with the dar al-harb.” See also, page 40 “Islam is a peaceful religion that is in perpetual (but not necessarily constant) warfare with the dar al-Harb. ‘This obligation [Jihad] is without limit of time or space. It must continue until the whole world has either accepted the Islamic faith or submitted to the power of the Islamic state.’” Lewis, Bernard, *The Political Language of Islam*, Chicago: The University of Chicago Press (1988) p. 73”

7 Quran 2:216 Jihad is ordained for you though you dislike it, and it may be that you dislike a thing which is good for you and you like a thing that is bad for your. Allah knows but you do not know.

8 Quran 2:193 And fight them until there is no more Fitnah (disbelief and worshiping of others along with Allah) and all and every kind of) worship is for Allah (Alone). But if they cease, let there be no transgression except against Az_Zalimum (the polytheists and wrong doers.)

9 Quran 9:5 Then when the Sacred Months have passed, the kill the Mushrikun wherever you find them, and capture them and besiege them, and lie in wait for them in each and every ambush. But if they repent and perform *As-Salat* (*Iqamat-asSalat*), and give *Zakat*, then leave their way free. Verily, Allah is Oft-Forgiving, most Merciful

10 Ibn Rushd. *The Distinguished Jurists Primer* (Vol I), Garnet Publishing, Reading, UK: (1994) p: 454-487

11 al-Misri, *Reliance of the Traveller*. p: 599-605, passim. See specifically “The caliph fights all other people until they become Muslim” p. 603 and “it is offensive to conduct a military expedition against hostile non-Muslims without the caliph’s permission (A: though if these is no caliph, no permission is required.)” p. 602.

12 Al-Mawardi, Abu al-Hasan. *Al-Ahkam al-Sultaniyya w’al-Wilayat al Diniyya* (*The Ordinances of Government*), Garnet

Publishing, Reading, UK: (2000) p. 63

13 Vol II, *The Encyclopaedia of Islam*, Brill, Leiden, 2009, page 538-539 under *djihad*

14 Islamic Law is the sharia and it comes in multiple interpretations, modified by local practices and individual interpretations. But at the strategic level, and within at least the Sunni Sects, there are four schools of Law: Hanafi, Hanbali, Maliki, Shafi, Malikite. For a detailed overview of Hanaffiyya, the Hanafi *madhhab* school of religious law, see Leiden Brill, *The Encyclopaedia of Islam*, (London: Luzac & Co, 1986) Vol III, p. 162-164.; For a detailed overview of Hanabila, the Hanbali *madhhab* school of religious law, see Leiden Brill, *The Encyclopaedia of Islam*, (London: Luzac & Co, 1986) Vol III, p. 158-162 For a detailed overview of Malikiyya, the Maliki *madhhab* school of religious law, see Leiden Brill, *The Encyclopaedia of Islam*, (London: Luzac & Co, 1991) Vol VI, p. 278-283. For a detailed overview of Shafiyya, the Shafii *madhhab* school of religious law, see Leiden Brill, *The Encyclopaedia of Islam*, (London: Luzac & Co, 1997) Vol IX, p. 181-189.

15 Thomas Patrick Hughes, *Dictionary of Islam: Being A Cyclopaedia Of The Doctrines, Rites, Ceremonies, And Customs, Together With The Technical And Theological Terms Of The Muslim Religion*. (originally printed in 1886)(Chicago: KAZI Publications, 1994) p. 280. "Concealing; keeping a secret" (Publishers Note: Kazi Publications, Inc, has reprinted this 19th Century *Dictionary on Islam* with the author's preface for its readers because of the comprehensiveness and scope of the work. No similar work has been done over 100 years later. We do not agree with all of the entries or descriptions but felt that the knowledge should be available to all to read and then to decide from himself or herself which descriptions are accurate of Muslim life and beliefs." p. vi)

16 Leiden Brill, *The Encyclopaedia of Islam*, (London: Luzac & Co, 2000) Vol X, p. 134

17 Al-Taqiya (variously al-taqiyya, taqiyya, taqiya) is based on Quran 3:28 and 16:106 (as well as hadith, tasfir literature and judicial commentaries) which permits, and encourages, precautionary dissimulation as a means for concealing true faith in times of persecution or deception when penetrating the enemy camp.

Sura 3:28 (Medina Period) Let not the believers take disbelievers as *Auliya* (protectors or helpers or friends) instead of the believers, and whoever does that will never be helped by Allah in anyway, except if you fear a danger from them. And Allah warns you against Himself (His punishment), and to Allah is the final return.

Sura 15:106 Any one who, after accepting faith in Allah, utters Unbelief,- except under compulsion, his heart remaining firm in Faith - but such as open their breast to Unbelief, on them is Wrath from Allah, and theirs will be a dreadful Penalty.

18 Al-Wala' Wa'l-Bara' According to the 'Aqeedah of the Salaf, 2, by By Shaykh Muhammad Saeed al-Qahtani, Al-Firdous Publishers, London. (1999) *passim*. The twenty categories of disassociation are with Disbelievers; on Disbelievers; on points of disbelief; the affection of Disbelievers; toward the disbelief; of the disbelievers faith;

the disbelievers as friends; to the disbelievers; sit with the disbelievers who ridicule the Koran; give disbelievers authority over Muslims; the disbelievers; express pleasure with the actions of disbelievers; draw near to the disbelievers; aid the disbelievers in wrong doing; Seek the advice of disbelievers; Honor the disbelievers; live among the disbelievers; collude with the disbelievers; revile the Muslims and love the disbeliever; support the ideologies of the disbeliever.

19 Sura 3:28 (Medina Period) Let not the believers take disbelievers as *Auliya* (protectors or helpers or friends) instead of the believers, and whoever does that will never be helped by Allah in anyway, except if you fear a danger from them. And Allah warns you against Himself (His punishment), and to Allah is the final return.

Sura 4:139 (Medina Period) Those who take disbelievers for *Auliya* (protectors or helpers or friends) instead of believers, do they seek honour, power and glory with them? Verily, then to Allah belongs all honour, power and glory.

Sura 4: 144 (Medina Period) O you who believe! Take not as *Auliya* (protectors or helpers or friends) disbelievers instead of believers. Do you wish to offer Allah a manifest proof against yourselves?

Sura 5:57 (Medina Period) O you who believe! Take not as *Auliya* (protectors and helpers) those who take your religion as a mockery and fun from among those who received the Scripture (Jews and Christians) before you, and nor from among the disbelievers; and fear Allah if you indeed are true believers.

Sura 9:23 (Medina Period) O you who believe! Take not as *Auliya* (supporters and helpers) your fathers and your brothers if the prefer disbelief to Belief. And whoever of yours does so, then he is one of the *Zalimun* (Wrongdoers)

Sura 9:29 (Medina Period) Fight against those who (1) believe not in Allah, (2) nor in the Last Day, (3) nor forbid that which has been forbidden by Allah and His Messenger (Muhammad) (4) and those who acknowledge not the religion of truth (Islam) among the people of the Scripture (Jews and Christians) until they pay the Jizyah with willing submission, and feel themselves subdued.

Sura 60:1 (Medina Period) O you who believe! Take not My enemies and your enemies (i.e. disbelievers and polytheists) as friends showing then affection towards them, while they have disbelieved in what has come to you of the truth (i.e. Islamic Monotheism, the Qu'ran, and Muhammad), and have driven out the Messenger (Muhammad) and yourselves (from your homeland) because you believe in Allah your Lord! If you have come forth to strive in My Cause and to seek My Good Pleasure, (then take not these disbelievers and polytheists, as your friends). You show friendship to then in secret, while I am All-Aware of what you conceal and what you reveal. And whosoever of you (Muslims) does that, then he has gone (far) astray from the Straight Path

Sura 60:2 (Medina Period) Should they gain the upper hand over you, they would behave to you as enemies, and stretch forth their hands and the tongues against you with evil, and they desire that you should disbelieve.

Sura 60:3 (Medina Period) Neither your relatives nor your children will benefit you on the Day of Resurrection (against

Allah). He will judge between you. And Allah is the All-Seer of what you do.

Sura 60:13 (Medina Period) O you who believe! Take not as friends the people who incurred the Wrath of Allah . Surely, they have despaired of (receiving any good in) the Hereafter, just as the disbelievers have despaired of those (buried) in graves (that they will not be resurrected on the Day of Resurrection)

20 There are two terms: Sira and Sunna. The *Sira* is "a genre of early Islamic literature." Mohammad's biography. "*Sira* means 'way of going'; 'way of acting'; 'way of life (in these meanings it is almost synonymous with *sunna*...In *hadith* collections and books on Islamic Law, the plural *siyar* is also used for 'rules of war and dealings with non-Muslims' " For a detailed discussion of "*Sira*" see Leiden Brill, *The Encyclopaedia of Islam*, (London: Luzac & Co, 1997) Vol IX, p. 660-663.

21 There are two terms: Sira and Sunna. The *Sunna* describes the "generally approved standard or practice introduced by (Mohammad) as well as the pious Muslims of olden days. And at the instigation of al-Shafi, the *sunna* of (Mohammad) was awarded the position of the second root (asl) of Islamic Law., the Shaira, after the Kuran. Not long after that, *sunna* came to stand for the all-encompassing concept orthodoxy, which is still in use today. Out of this there grew the dichotomy between Sunni (orthodox and Shi'i (heterodox) Islam." For a detailed discussion of "*Sunna*" see Leiden Brill, *The Encyclopaedia of Islam*, (London: Luzac & Co, 1997) Vol IX, p. 878-881.

22 Arguably, the Sunna and the Hadiths are taken as the same.

23 Hughes, p. 128. "Fiqh. The dogmatic theology of the Muslims. Works on Muhammadan law, whether civil or religious, The books most read by the Sunnis are the *Hidayah*, written by a learned man named Ali ibn Abi Bakr, (A.H. 593), part of which has been translated by the late Colonel Charles Hamilton; the *Darru'l Mukhtar*, by Alu 'd-din, (A.H. 1088), the *Sharhu'l-Wiqayah*, by Ubaidu 'Ilah ibn Masud, (A.H. 745), the *Raddu 'l Muhtar*, by Saiyid Muhammad Amin ibn Abidi d-din, and the *Fatawa Alamgiri*. Amongst the Imamiyah School, or the Shiahs, the principle works are *Kitabu 'sh-Sharai*, by Abu l-Hasan Ali (A.H. 326), the *Muqni fi 'l-fiqh*, by Abu ja'far (A.H. 360); the *Shara'l'u 'l-Islam*, by Shaikh Najmu d'din (A.H. 679) and the *Jami'u 'l-Abbasi*, by Baha'u d-din (A.H. 1031)"

24 Hallaq, Wael B, *A History of Islamic Legal Theories: An Introduction to Sunnie usul al-fiqh*, Cambridge University Press, Cambridge, UK: (1997). 40

25 Al-Imam Abu Zakariya Yahya, *Riyad-us-Saliheen*, Darussalam, Riyadh, Saudi Arabia: (1998).

26 al-Juywani, Al-Haramayn. *A Guide to Conclusive Proofs for the Principles of Belief*, Garnet Publishing, Reading, UK: (2001)

27 Ibn Sallam, *The Book of Revenue*, Garnet Publishing, Reading, UK: (2003)

28 Keller, Nuh Ha Mim. *Al-Masqasid: Nawawi's Manual of Islam*, Amana Publications, Beltsville, MD: (1994)

29 *Reliance of the Traveller*, written in 14th Century by Ahmad ibn Naqib al Misri (d. 769/1368), and translated

and updated by Nuh Ha Mim Keller in the 1980s, is the codification of sharia from the Shafi legal perspective. For investigators and analysts *Traveller* is not adequate for fully understanding the full scope of Islamic law, but it is useful as a basic starting point. It should be remembered, however, that:

"...the four Sunni schols of Islamic law, Hanafi, Maliki, Shafi'i and Hanbali, are identical in approximately 75 percent of their legal conclusions, while the remaining questions, variances within a single family of explainers of the Holy Koran and prophetic sunna, are traceable to methodological differences in understanding or authentication of the primary textual evidence, differing viewpoints sometimes reflected in even a single school. " al-Misri, *Reliance of the Traveller*, p. vii

30 al-Misri, *Reliance of the Traveller*, p. 730.

31 al-Misri, *Reliance of the Traveller*, p. 732

32 al-Misri, *Reliance of the Traveller*, p. 732

33 al-Misri, *Reliance of the Traveller*, p. 743

34 Khalil ibn 'Abd al-Qadir al-Shaybani al Nahlawi, a Hanafi Scholar in Damascus, who died in 1350/1931.

35 al-Misri, *Reliance of the Traveller*, p. 743

36 al-Misri, *Reliance of the Traveller*, p. 743

37 al-Misri, *Reliance of the Traveller*, p. 742

38 al-Misri, *Reliance of the Traveller*, p. 744.

39 al-Misri, *Reliance of the Traveller*, p. 745.

40 al-Misri, *Reliance of the Traveller*, p. 745.

41 E.J. Brill, *The Encyclopaedia of Islam Vol II*, (Leiden, The Netherlands: 1983), p. 1038.

42 al-Misri, *Reliance of the Traveller*, p. 746

43 al-Misri, *Reliance of the Traveller*, p. 746

44 al-Misri, *Reliance of the Traveller*, . 746

45 al-Misri, *Reliance of the Traveller*, p. 746

46 al-Misri, *Reliance of the Traveller*, p. 757

47 al-Misri, *Reliance of the Traveller*, . 748

48 al-Misri, *Reliance of the Traveller*, . 748

49 al-Misri, *Reliance of the Traveller*, . 748

50 al-Misri, *Reliance of the Traveller*, . 759

51 al-Misri, *Reliance of the Traveller*, . 756

52 al-Misri, *Reliance of the Traveller*, . 756

53 al-Misri, *Reliance of the Traveller*, p. 759

54 al-Misri, *Reliance of the Traveller*: . 759

55 al-Misri, *Reliance of the Traveller*, p. 759

56 al-Misri, *Reliance of the Traveller*, p. 763

57 al-Misri, *Reliance of the Traveller*, p. 674

58 al-Misri, *Reliance of the Traveller*, p. 771-772

